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CONSIDERATION OF GILBERTO GUARDIA FABREGA TO BE ADMINISTRATOR OF THE PANAMA CANAL COMMISSION

JUNE 28, 1990.—Ordered to be printed

Mr. NUNN, from the Committee on Armed Services, submitted the following

REPORT

The Committee on Armed Services, having had under consideration the nomination of Mr. Gilberto Guardia Fabrega to be Administrator of the Panama Canal Commission, reports favorably thereon and recommends the nomination be confirmed by the Senate.

COMMITTEE ACTION

On May 10, 1990, the Senate received from President Bush the nomination of Mr. Gilberto Guardia Fabrega to be Administrator of the Panama Canal Commission. The Committee held a public hearing with Mr. Guardia on June 21 to consider his historic nomination in that this is the first time a foreign national has been considered for confirmation by the U.S. Senate. On June 28, the Committee voted unanimously to report the nomination favorably with the recommendation that the nomination be confirmed by the Senate.

SCOPE OF THE COMMITTEE'S REVIEW OF MR. GUARDIA'S NOMINATION

1. COMMITTEE PROCEDURES

During the 100th Congress, the Committee initiated new procedures for consideration of nominations for civilian appointed positions in the Executive Branch that are subject to the Committee's jurisdiction. In addition, the Committee adopted standards to guide its consideration of the qualification of nominees. The Committee applied these procedures and standards during consideration of Mr. Guardia's nomination.

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2. REVIEW OF REQUIRED SUBMISSIONS BY THE NOMINEE AND THE EXECUTIVE BRANCH

a. Committee questionnaire

The Committee requires each nominee to complete a questionnaire relating to the nominee's qualifications and potential conflicts of interest. Mr. Guardia's response to the Committee's questionnaire provided basic biographical and financial information and served as the starting point for the Committee's inquiry into Mr. Guardia's qualifications and suitability for the position of Administrator of the Panama Canal Commission. Pursuant to its normal practice, the Committee Chairman submitted several advance questions to the nominee on May 16, 1990. Mr. Guardia provided his response to the Chairman on June 11, 1990. They have entered into the hearing record and are included as appendix A to this report. A biographical sketch of Mr. Guardia is presented as appendix B of this report.

b. Financial disclosure and background materials

As part of the confirmation process, the Committee received the letters on conflict of interest and related matters required of the nominee, the Office of Government Ethics, and the General Counsel of the Panama Canal Commission. Based upon this information, the Committee concludes that the nominee is in compliance with all applicable laws and regulations governing conflict of interest.

c. FBI summary memorandum on the background investigation of Mr. Guardia

The White House provided the Committee with the summary memorandum on the background investigation of the nominee by the Federal Bureau of Investigation (FBI). This document was reviewed by the Chairman and Ranking Minority Member. The Committee also received the required letter from the Counsel to the President outlining the nature and scope of the FBI background investigation. The Committee concludes that there is nothing in Mr. Guardia's background, as reflected in the FBI investigation, that would render him unfit to serve as Administrator of the Panama Canal Commission.

3. COMMITTEE PROCEEDINGS

On May 10, 1990, President Bush formally submitted to the Senate the nomination of Mr. Guardia to be Administrator of the Panama Canal Commission, which was referred to the Committee on that date. The Committee met in public session on June 21 to receive testimony from Mr. Guardia on the Panama Canal Commission. On June 28, the Committee completed its deliberations on the nomination.

QUALIFICATIONS OF MR. GUARDIA

1. ROLES OF THE ADMINISTRATOR OF THE PANAMA CANAL COMMISSION

The Administrator of the Panama Canal Commission is an extremely important position. The Administrator is the Chief Execu-

tive Officer of the Commission and, subject to the supervision and direction of the Board of Directors of the Commission, exercises general and active control of the Commission's affairs and business and general supervision over its officials, agents, attorneys, and employees. Pursuant to Article III.3.(c) of the Panama Canal Treaty, a Panamanian national is to be the Administrator beginning January 1, 1990. President Bush appointed Mr. Fernando Manfredo, a Panamanian national, as Acting Administrator when he rejected an individual proposed by General Manuel Noriega. With the restoration of democracy to Panama, President Bush nominated Mr. Guardia, who was proposed by Panamanian President Endara. Based on research by the Congressional Research Service which checked with both present and past Executive Clerks of the White House and the United States Senate as well as the chief of the Presidential Appointments Office of the Department of State, Mr. Guardia is the first foreign national to be considered for confirmation by the United States Senate.

2. COMMITTEE'S EVALUATION OF THE QUALIFICATIONS OF MR. GUARDIA

The Committee determined that Mr. Guardia is highly qualified to serve as Administrator of the Panama Canal Commission. Mr. Guardia received a B.S. degree in Civil Engineering from the University of Santa Clara, Santa Clara, California. He has had a distinguished career in the private sector.

A comparison of the qualifications of Mr. Guardia with the general standards of the Committee for this particular position indicate the following:

Standard No. 1. *Nominees must be of unquestionable integrity.* Mr. Guardia's career reflects adherence to the standards of integrity expected of government employees.

Standard No. 2. *Nominees must be capable of performing as members of the Panama Canal Commission team.* Based upon Mr. Guardia's previous performance in the private sector and his written and oral testimony and interviews, the Committee determined that Mr. Guardia is capable of effectively performing as a member of the Panama Canal Commission team, which includes the Board of Directors of the Panama Canal Commission.

Standard No. 3. *Nominees should have a substantial understanding of United States' policies relating to the management and operation of the Panama Canal.* Based upon his written and oral testimony and interviews, the Committee determined that Mr. Guardia meets this standard.

Standard No. 4. *Nominees must demonstrate a commitment to emphasizing United States' goals and objectives relating to the Panama Canal.* Mr. Guardia's written and oral testimony and interviews provide substantial evidence of his understanding of, appreciation for, and commitment to, overall U.S. goals and objectives for the Panama Canal.

Standard No. 5. *Nominees must have substantial experience and expertise within their proposed areas of responsibility.* Based upon his education and training as a professional engineer and his experience as president and chief executive officer of a large architec-

tural and civil engineering firm, the Committee determined that Mr. Guardia has the requisite experience and expertise.

Standard No. 6. *Nominees must be capable managers and administrators.* Mr. Guardia's experience as president and chief executive officer demonstrate his capability as a manager and administrator.

Standard No. 7. *Nominees must be suited by temperament for the demands of Canal management.* Mr. Guardia has worked in complex and demanding environments in the private sector.

Standard No. 8. *Nominees must have a strong commitment to public service.* Mr. Guardia's willingness to be the first foreign national to hold a public office requiring Senate confirmation at a time of significant challenge for the Panama Canal Commission testifies to his commitment to public service.

Standard No. 9. *Nominees must demonstrate an understanding of, and respect for, the Constitutional principles of the Nation, including the legitimate role of the Congress.* Mr. Guardia's written and oral testimony and interviews provide ample evidence of his understanding of our Constitutional principles and the role of Congress. Moreover, his personal experience of loss of democracy in his country have given him a heightened appreciation of those principles and this institution. Mr. Guardia stated that he was prepared to take an oath to support the Constitution of the United States.

Conclusion

On June 28, 1990, the Committee on Armed Services approved a motion to report favorably the nomination of Mr. Gilberto Guardia Fabrega to be the Administrator of the Panama Canal Commission with the recommendation that the nomination be confirmed by the Senate.

APPENDIX A

QUESTIONS FOR MR. GILBERTO GUARDIA FABREGA

DUTIES

Article III.3.(c) of the Panama Canal Treaty and Section 3613 of Title 22, United States Code provide for the position of Administrator of the Panama Canal Commission.

Should you be confirmed as Administrator of the Panama Canal Commission, what duties do you expect to perform?

What do you believe the relationship of the Administrator to be to the Supervisory Board of the Panama Canal Commission?

It is my understanding that the Administrator, subject to the direction and under the supervision of the Board of Directors, serves as the Chief Executive Officer of the Panama Canal Commission. As such, I will exercise general and active control over the Canal enterprise, including its offices, business and operations, and general supervision over its officials, agents, attorney, and employees. In addition, I will exercise such authorities vested by law in the Commission as are allocated to me by the Board.

OATH

Article VI, clause 3, of the Constitution of the United States provides that all executive officials of the United States shall be bound by oath or affirmation to support the Constitution of the United States.

Are you prepared to take such an oath?

Yes.

Do you believe that you can support the Constitution of the United States under all circumstances even though you are not a national of the United States?

Yes, as evidenced by the oath of office (copy attached), which I will take upon assuming the post of Administrator.

MOST SERIOUS PROBLEMS

What do you consider the most serious problems in the management and operation of the Panama Canal? What management activities and timetables would you establish to address these problems?

In my view, the primary challenges facing the Panama Canal Commission over the next few years are to insure the continued safe and efficient operation of the Canal and, at the same time, prepare for a smooth transition to Panamanian control on December 31, 1999. We will also have to continue to maintain and improve the waterway to assure its value to Panama as well as to maritime and trade interests of the world shipping community well into the next century; and we will need to encourage personnel

practices which will foster a high level of morale within the Canal organization.

QUALIFICATIONS

What do you believe are the necessary skills and qualities that an individual should possess to be the Administrator of the Panama Canal Commission? What education and practical experience do you have to equip you to perform in that position?

The Panama Canal Commission is in essence an international utility. As such, it should be operated in accordance with generally accepted business principles and well-defined budget programs. Accordingly, the Administrator should have a solid background in business management. In that regard, I believe that my training as a professional engineer and my experience as president and chief executive officer of a large architectural and civil engineering firm in Panama for over 25 years will serve me well in my new position with the Canal.

WORK FORCE MORALE

The Committee has been advised that there are some problems between American and Panamanian employees of the Panama Canal Commission which have led to morale problems in the work force.

Are you aware of these problems?

Yes.

What do you believe are the root causes of these problems and what steps would you plan to take to address them?

In my estimation, much of the situation at the Canal is a natural consequence of the treaty implementation phase in which the Commission finds itself at this point in time. The Board of Directors is already addressing this issue in the larger context of preparations for the transfer of the Canal to Panama at the end of this century. In fact, the Board has established standing committees to study a whole range of matters, including those directly affecting the morale of the work force. I fully support those planning efforts and intend to participate actively in them as the new Administrator.

OPERATION JUST CAUSE

The Committee has received a great deal of testimony concerning Operation Just Cause; the Committee leadership visited Panama shortly after the invasion; and has actively followed the events in Panama subsequent to that operation. Naturally, that operation has had significant impact with respect to relations between the United States and Panama and on the future management and operation of the Panama Canal.

What do you believe is the net result of Operation Just Cause on the Panama Canal Commission and what is your personal opinion concerning the long term prospects for the operation and management of the Panama Canal?

As you may be aware, the Noriega regime had been causing serious operational difficulties for the Commission for quite some time, principally through the harassment of both its Panamanian and U.S. citizen employees. With the dismantling of that dictatorship

and the reinstatement of a democratic system in Panama in the wake of Operation Just Cause, there is a new and dramatically improved relationship between our two governments, which can only augur well for the future of the Panama Canal.

PREPARATION FOR TURNOVER

Article III.8. of the Panama Canal Treaty, after referring to the Supervisory Board and the Administrator and Deputy Administrator of the Panama Canal Commission, provides for "growing participation of Panamanian nationals at all other levels and areas of employment" in the Panama Canal Commission "with the objective of preparing, in an orderly and efficient fashion, for the assumption by the Republic of Panama of full responsibility for the management, operation and maintenance of the Canal upon the termination of" the Treaty.

Do you believe that adequate progress has been made by the Panama Canal Commission and others to meet this objective?

Yes, but we must nevertheless continue our efforts in this area.

What steps would you take to sustain or accelerate, as appropriate, the process of preparing for the assumption by the Government of Panama of its responsibility to manage, operate and maintain the Canal upon termination of the Panama Canal Treaty?

The transition from American to Panamanian control of the Canal at the end of the century must be accomplished without significant disruption in efficient operations, and the waterway must continue to be a cost-effective and competitively viable alternative for world shipping. To accomplish these goals, Panama must begin now to focus on a number of issues. I believe some of the most important among these are the type of entity which will operate the Canal with Panama as the next steward, and the employment system which the Canal entity will offer under Panama's control.

For its part, the United States can facilitate the planning effort by readily sharing available information and data with Panama that describe and explain the functional alignments, management practices and regulatory systems now followed by the Panama Canal Commission. In addition, the United States could ease the transition to Panamanian control of the Canal by examining existing U.S. legal requirements in such fields as labor relations, as well as in appropriate personnel and fiscal matters. In many instances, Panama treats subjects such as these in a manner substantially different from that provided for under current U.S. law, and consideration might thus be given to whether the two systems can be more closely aligned in some respects prior to the date the Canal is transferred.

OATH OF OFFICE

I do solemnly affirm that I will well and faithfully discharge the duties of the office on which I am about to enter and that; on assuming said office by virtue of the Panama Canal Treaty, I will comply with and support the laws and Constitution of the United

States as well as the laws and Constitution of the Republic of Panama.

GILBERTO GUARDIA F.,
Administrator,
Panama Canal Commission.

APPENDIX B

CURRICULUM VITAE—GILBERTO GUARDIA F.

Born

Panama, February 13, 1930.

Education

University of Santa Clara, Santa Clara, California, B.S. in Civil Engineering, 1950.

Principal activity

President and Chief Executive Officer: Empresas Diaz y Guardia, S.A., Architecture & Engineering, General Construction Management and Contracting, Light Steel Manufacturing.

Licenses

Registered Professional Engineer, Reg. No. 51-6-7, Technical Council of Engineering and Architecture, Panama, Republic of Panama.

Registered Professional Engineer, Reg. No. 141E, Canal Zone Board of Registration for Architects and Professional Engineers, Republic of Panama.

Registered Professional Engineer, Reg. No. 28101, State of Florida Board of Professional Engineers and Land Surveyors, United States of America.

Other activities

Board of Directors:

Industrial Development Bank.
Fiduciary Bank of Panama (Affiliate of the National Bank of Paris).
Dadeland Bancshares, Inc., Miami, Florida.
Dadeland Bank, Miami, Florida.

Ex-Director:

National Council of Private Enterprise.
Chamber of Commerce, Industry and Agriculture of Panama.
Panamanian Association of Business Executives.
Panamanian Chamber of Construction.

Memberships

Panamanian Society of Engineers and Architects.
Panamanian Chamber of Construction.
Fellow American Society of Civil Engineers.

American Concrete Institute.
American Society of Professional Engineers.
Stanford Research Institute.
World Business Council.

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